

**MINUTES OF THE
CITY PLANNING COMMISSION
JUNE 1, 2007
J. MARTIN GRIESEL CONFERENCE ROOM
TWO CENTENNIAL PLAZA – SUITE 700
805 CENTRAL AVENUE**

CALL TO ORDER

Mr. Faux called the meeting to order at 9:04 a.m.

Commission Members:

Present: Caleb Faux, Jacquelyn McCray, James Tarbell, Scott Stiles, Rainer vom Hofe, and John Schneider.

Community Development and Planning Staff: Margaret Wuerstle, Bonnie Holman, Caroline Kellam, Steve Briggs and Jennifer Walke.

Law Department:
Julia Carney

APPROVAL OF MINUTES

Submission of the minutes from the May 18, 2007 Planning Commission meeting for approval.

Motion:	Ms. McCray moved approval of minutes.
Second:	Mr. vom Hofe
Ayes:	Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays:	None, motion carried

CONSENT ITEMS

ITEM #1 A report and recommendation on authorizing the sale of a portion of Dover Street at McGregor Avenue in Walnut Hills, which property is no longer needed for any municipal purpose.

ITEM #2 A report and recommendation on authorizing the sale of surplus City-owned real property on Humbert Court between Corbin and St. Peter Streets, to Revolution Properties, LLC.

ITEM #3 A report and recommendation on accepting and confirming quitclaim deeds from Adams Place Condominium Homeowners Association and AP Parking Company, LLC, conveying to the City of Cincinnati a total of

approximately 5,368 square feet of real property located on Adams Crossing for the Mount Adams Steps project.

ITEM #4 A report and recommendation on an ordinance authorizing the sale of surplus City-owned property located at Messinger Avenue and Auditor's Parcel 247-6-295 in College Hill.

Mr. Faux moved Item #5 to the Discussion agenda to allow testimony from an interested party.

Mr. vom Hofe requested that Item #6 be moved to the Discussion agenda.

ITEM #6A A report and recommendation on an ordinance to authorize the grant of a permanent ingress and egress easement over City property in favor of property owned by JMDH Real Estate of Cincinnati, LLC, located at 4501 West Mitchell Avenue in Winton Place, which interest is not needed for any municipal purpose.

Motion: Mr. Schneider moved approval of Consent Items #1 - #4 and #6A.
Second: Mr. Tarbell
Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays: None, **motion carried**

DISCUSSION ITEMS

ITEM #5 A report and recommendation on authorizing the sale of Holcroft Street south of Martin Luther King Drive and Trost Street in the community of Avondale to Reilly U & H Management, LLC, which property is no longer needed for any municipal purpose

BACKGROUND: Reilly U & H Management, LLC has petitioned to purchase the Property to be included in a future retail development.

An appraisal of the Property indicates that the fair market value is \$18,500, which the petitioner has deposited with the City Treasurer. However, an abutting property owner has not consented to the sale, so notice of the introduction of this ordinance into Council must be published in a newspaper of general circulation for six consecutive weeks prior to any final Council action. A special public hearing is not required nor is it necessary to hold up consideration by the City Planning Commission during the notice process.

RECOMMENDATION:

The staff of the City Planning Department recommended the City Planning Commission take the following action:

Authorize the sale of Holcroft Street south of Martin Luther King Drive and Trost Street to Reilly U & H Management, LLC, which real property is no longer needed for any municipal purpose.

DISCUSSION

Ms. Margaret Wuerstle, Chief Planner, explained that it had come to her attention that the McDonalds Franchise owner had been negotiating with the Dunkin Donuts owner regarding the Holcroft Street property.

Mr. Larry Allewalt, McDonald's Area Real Estate Manager, stated that the Holcroft Street property was adjacent to the McDonald's restaurant located at 413-439 East Martin Luther King Drive. He said that attorney Anthony Coyne of Mansour, Gavin, Gerlack & Manos Co., L.P.A, was representing McDonald's and sent a letter to Ms. Wuerstle requesting a 30-day extension in the matter. Mr. Allewalt stated that it was his understanding that Attorney Coyne had sent correspondence indicating that the matter should be postponed.

Ms. Wuerstle stated that she had not received a fax from the City Solicitor regarding the matter. Ms. Julia Carney, of the City Law Department stated that the City Solicitor had sent no such correspondence and that there was no reason to postpone. She further stated that if the Planning Commission approved the sale of the property there would be a 6-week advertising period prior to any action by the City Council since the abutting property owner did not agree to the sale.

Mr. Allewalt distributed an e-mail from his attorney to the Planning Commissioners. Mr. Faux stated that the letter from Mr. Coyne was addressed to Ms. Wuerstle and asked if she had received the correspondence. She answered that she had not seen it and indicated that based on the time and date listed it had been sent after the Planning Commission meeting had started.

Mr. Allewalt stated that he felt at a disadvantage due to the fact that his attorney was not present to speak to the issues. He stated that he felt they might have rights in regards to parts of the streets that are to be vacated. Ms. Carney stated that the abutters do not have underlying interests to the streets and all property interest rests with the City. She explained that the matter was an outright sale and that the McDonald's portion of property abutting the street was relatively small. She presented a photo to show the locations of the street and abutting businesses.

Mr. Bill Kilroy, McDonald's franchise owner stated that it was his understanding that McDonald's had acquired the extension to the streets at some point. He stated that he had viewed a potential plan for Dunkin Donuts that involved traffic crossing his driveway. He stated that he was concerned with the traffic issues.

Ms. Carney stated that the Law Department researched the creation of the street and determined that the City had ownership of the street.

Mr. Schneider asked if the petitioner's plans were self-contained. Mr. Kenneth Kreider, Keating, Muething & Klekamp, PLL, attorney for the petitioners Reilly U & H Management, LLC (Dunkin Donuts), offered to display his clients plans. Mr. Faux agreed to the request and stated that he welcomed additional information to better understand the issue.

Mr. Schneider asked Mr. Kilroy what he would gain if he owned the property. Mr. Kilroy answered that he hoped in the future to build a beautiful new McDonald's restaurant that would be repositioned in a way to improve the traffic flow and safety on the lot and City streets. Mr. Schneider asked if he thought a new building would increase business. Mr. Kilroy answered that he did.

Mr. Greg Long, of the Department of Transportation (DOTE), stated that he contacted the owners of McDonald's and Dunkin Donuts to determine if a cross-access situation would be feasible to eliminate a potential parallel curb cut on Vernon. He stated that he asked Dunkin Donuts to prepare a site plan to show that idea. That particular plan was only a concept to provide a start for discussion on the issue. Mr. Schneider asked Mr. Kilroy why he objected to the shared access. Mr. Kilroy stated that he was concerned with traffic and pedestrian safety. He further explained that some of the customer and delivery vehicles were large and would pose a problem.

Mr. Kreider gave a brief history of the process using a map to orientate the Planning Commissioners. He stated that the street property is internal to the Dunkin Donuts site and said he felt that the real issue was business competition. He stated that the street does not provide any additional access to McDonald's. He explained that the property is surplus City property and that the petitioner proposes an appropriate two-story building that fits with the uptown neighborhood. Mr. Kreider stated that he felt the Planning Commission should approve the sale and that McDonald's would have 6 weeks to respond.

Mr. Riley, petitioner, stated that he would not oppose shared access if it was something the City required.

Motion:	Mr. Tarbell moved approval of Item #5.
Second:	Ms. McCray
Ayes:	Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays:	None, motion carried

ITEM #6 A report and recommendation on authorizing the sale of surplus city-owned parcels of real property on Burnet, Harvey, Rockdale and Erkenbrecker Avenues, and portions of Maple Avenue and Jay Street,

located in Avondale, to NTP Development, LLC (Uptown Consortium), which real property is no longer needed for any municipal purpose.

BACKGROUND:

All of these city owned properties are within the boundaries of the Burnet Avenue Urban Renewal Plan, which was adopted by City Council on August 2, 2006. The sale of these properties will facilitate the implementation of the Burnet Avenue Urban Renewal Plan.

These properties are being sold for \$1.00 for the following reasons:

- The public will receive significant benefit because the sale will allow for the construction of new residential housing, retail, medical offices and a parking garage;
- The property serves no continuing municipal purpose; and
- Divestment of the property will relieve the City of risk management and maintenance responsibilities.

RECOMMENDATION:

The staff of the City Planning Department recommended that the City Planning Commission take the following action:

Approve an ordinance authorizing the City Manager to enter into and execute the sale of surplus city-owned parcels of real property on Burnet, Harvey, Rockdale and Erkenbrecker Avenues, and portions of Maple Avenue and Jay Street, located in Avondale, to NTP Development, LLC, (Uptown Consortium) which real property is no longer needed for any municipal purpose.

DISCUSSION

Mr. vom Hofe asked why the property was being sold for \$1.00, how the parking garage would benefit the community, and if the plans for the garage would be brought before the Planning Commission prior to construction.

Mr. Matt Latham, of the Uptown Consortium, stated that the sale of the property was part of the Burnet Avenue Project. He stated that the fair market value of the property was approximately 1.4 million dollars and that the developer had agreed to make an approximately 5 million-dollar investment in the areas public infrastructure including roads and utilities. He explained that the parking garage was part of the PD zoning that was approved by the Planning Commission on May 18, 2007. Ms. Wuerstle further explained that the Final Development Plan for the PD would have to be approved by the Planning Commission.

Mr. Tarbell asked if the residential owners in the PD would have use of the parking garage. Mr. Latham answered that the condominium owners would have their own

separate parking, which would be in scale with the surrounding neighborhood. Mr. Tarbell commented that most new garages needed two or more uses to be financially feasible. Mr. Stiles asked if there were any plans to use a portion of the garage as public parking. Mr. Latham said that future plans included use by retail customers and hospital patients and visitors.

Motion: Mr. Stiles moved approval of Item #6.
Second: Mr. Schneider
Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays: None, **motion carried**

ITEM #7 A report and recommendation on a proposed text amendment for §1421-21. Front Yard Modifications of the Cincinnati Zoning Code.

PURPOSE:

To add language to the Zoning code that would modify the front yard setback requirement through averaging in situations where the existing front yard setbacks do not equal the minimum required front yard setback for the district.

REVISED PROPOSED TEXT AMENDMENT:

§ 1421-21. Front Yard Modifications.

The front yard requirements specified for principal buildings *in residential districts* may be modified subject to the following:

- (a) **Required Front Yard.** Principal buildings must have a *minimum* front yard that:
- (1) If abutted on both sides by the improved lots whose front yards do not conform with the district regulations, equals the average depth of those abutting front yards; or
 - (2) If abutted on one side by an unimproved lot or a side street of a corner lot and on the other side by an improved lot whose front yard does not conform to the district regulations, equals the average of the depth of the front yard of the improved lot and the front yard setback requirement of the district; or
 - (3) *If abutted on both sides by improved lots, excluding panhandle lots whose front yard depth exceeds the required front yard setback, the required front yard depth shall be equal to the average depth of those abutting front yards; or*
 - (4) *If abutted on one side by an unimproved lot and on the other side by an improved lot whose front yard depth exceeds the required front yard setback, the required front yard depth shall equal the depth of the improved lot.*

[Note: Must add illustrations to FIGURE 1421-21 showing 3 and 4, being prepared.]

JUSTIFICATION

At the staff conference held on May 10, 2007, the neighborhoods in attendance were concerned with averaging the properties within 400 feet. They felt that the 400-foot requirement would create a “sawtooth” effect that would not be desirable. Additionally, the neighborhood representatives felt that in neighborhoods with established setbacks greater than required by code, the averaging should be mandatory.

Following the May 18, 2007 City Planning Commission meeting representatives from the Department of Law, Department of Buildings and Inspections and Department of Community Development and Planning met, discussed and recommended the aforementioned revisions to Chapter 1421.

The language under (a) **Required Front Yard** addresses the original concern of the Hyde Park neighborhood. However, new language has been inserted that now limits the front yard averaging option to only residential districts. The existing language in the Code recognizes the potential for incompatible setbacks in any district when new buildings are constructed immediately adjacent to existing structures. One of the purposes of the Zoning Code is to foster convenient, harmonious and workable relationships among land uses. Setback averaging is a tool that provides flexibility in the implementation of the Zoning regulations and promotes compatibility of infill development with existing structures.

RECOMMENDATION:

The Department of Community Development and Planning staff recommended that the City Planning Commission remove the language that restricts front yard setback averaging to residential districts and approve the remaining language of the text amendment.

DISCUSSION

Mr. Faux stated that this item had been discussed at length at the May 18, 2007 Planning Commission meeting and then held to allow the Law Department to draft final language. Ms. Carney stated that the final language was complete and that the only change was the repositioning of two commas.

Mr. Carl Uebelacker, Hyde Park resident, stated that he supported staff recommendations and urged the Planning Commissioners to approve the text amendment and expedite its presentation to City Council.

Mr. Schneider requested that in the future for issues that are spatial in nature, it would be helpful for staff to provide additional information or perhaps graphics in staff reports to provide better understanding for the readers.

Ms. Wuerstle stated that in the first sentence of the text amendment the phrase “in residential districts” was inserted. She explained that the current language in the code did not limit the averaging provision to residential districts. She stated that staff felt that in the future it might be beneficial to have the averaging option in office districts. Ms. Wuerstle pointed out that staff was recommending that the City Planning Commission remove the language that restricts front yard setback averaging to residential districts. Ms. McCray stated that she did not understand why it was presented in such a manner. Mr. Faux clarified that the Law Department wrote the language and the Planning staff wrote the recommendation. Ms. Carney stated that the Law Department had moderate concerns with allowing averaging in all districts and stated that they felt the most concern was with the residential districts. Ms. McCray stated that she preferred the text amendment as written by the Law Department.

Motion: Ms. McCray moved approval of Item #7 the language as written.
Second: Mr. vom Hofe
Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays: None, **motion carried**

ITEM #8 A report and recommendation on a proposed change in zoning from RMX to CN-M at 24 East University Avenue, in Corryville.

Mr. Steve Briggs, Senior Planner presented this item.

GENERAL INFORMATION:

Current Owner and Petitioner: Kenneth William Tully
7681 Briargreen Drive
Cincinnati, Ohio 45248

Request: A rezoning of the property at 24 East University Avenue (HCAP, Bk. 104, Pg. 4, Par. 42) from the existing RMX Residential Mix District to a CN-M Commercial Neighborhood Mixed District.

Staff Conference: The Department of Community Development and Planning staff held a conference on this request on Wednesday May 16, 2007.

Findings: The property at 24 East University Avenue is currently zoned RMX Residential Mix District. The property is a nonconforming use within the RMX District. The property was previously zoned B-2 Community Business District prior to 2004. The property is immediately adjacent to an existing CN-M District. The property owner is having difficulty selling the property and believes the nonconforming status limited sale opportunities. The current land use is office, food preparation [bakery] and six apartments. The building was built in approximately 1880 and has had a long history of commercial use on the first and lower floors with residential units above.

Throughout its history the property has been a location for a book warehouse, Nick the Tailor, a theater company that presented live performances and bakeries. From 1946 to 1962 Bacher's Bakery operated from this property. From 1965 to 1976 the property was home to Bake and Freeze Pie Company. The petitioner has owned the property since 1976 and operated the Randy's Pie Company until recently when The Barkery Company operation began producing dog briskets. The apartment units have occupied most recently as college student housing.

Adjacent Land Use: The adjacent land use to the west is community parking lot, to the north, east and south are two and three unit residential buildings

Community Response: The Corryville Community Council has been notified of all public meetings associated with this change of zoning request.

Plans: The Corryville University Village Urban Renewal Plan [Ord. 114-2005] approved by City Council on March 23, 2005 identifies this property within the Opportunities Plan subsection as a proposed residential redevelopment area [page 48].

Zoning Code Review: The property is an existing nonconforming within the existing RMX District. The property has use rights found in Chapter 1447, Nonconforming Uses and Structures that are attributing to the RM 0.7 District. In the RM 0.7 District office uses are limited and food preparation is not permitted. The proposed CN-M District would permit the Office Use, Food Preparation [Bakery] and the six apartments.

CONCLUSIONS:

1. The property at 24 East University Avenue has had a long history of mix land use office, food preparation and multi-family residential occupancy.
2. The property was previously zoned B-2 Community Business District prior to 2004 that would have permitted current uses.
3. Change in the zone designation for this property from RMX to CN-M would make all current land use activity a permitted use.

RECOMMENDATION:

The staff of the Department of Community Development and Planning recommended that the City Planning Commission take the following action:

Approve a zone change at 24 East University Avenue from the existing RMX Residential Mix District to a CN-M Commercial Neighborhood Mixed District.

DISCUSSION

Mr. Briggs gave a brief overview of the proposed zone change. He presented a map and photos and stated that the property is currently zoned RMX Residential Mix District and is a nonconforming use. The property was previously zoned B-2 Community Business

District prior to the new Zoning Code in 2004. The property is immediately adjacent to an existing CN-M District. He stated that the property owner is having difficulty selling the property and believes the nonconforming status has limited sale opportunities.

Ms. Ima Cooper, long-time Corryville resident, asked if the zone change would be considered spot zoning and if the zone change would affect residential taxes. Mr. Faux explained that since the CN-M District abutted the property it would not be a spot zone. He added that taxes were not based solely on zoning.

Motion: Mr. Stiles moved approval of Item #8.
Second: Mr. Schneider
Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe and Mr. Schneider
Nays: None, **motion carried**

Mr. Faux stated that Item #9 was being held from the agenda for two weeks at the request of the Law Department.

DISCUSSION

Mr. Schneider asked if agricultural operations could have retail uses in the NM zone. Ms. Wuerstle explained that the purpose of the zone would be to eliminate the allowance of retail uses, which had not been allowed in their previous zoning district. She said that the residents were concerned about increased traffic and the types of retail uses that could come into the neighborhood. The only retail that would be allowed would accessory use to a production operation. Ms. Wuerstle agreed with Mr. Schneider that the new zoning would not take rights away from the current property owners.

OTHER BUSINESS

ITEM #10 A presentation on the Public View Sheds Study by Eric Russo of The Hillside Trust.

DISCUSSION

Ms. Wuerstle introduced Mr. Eric Russo of the Hillside Trust and distributed a copy of the Public View Sheds Study to the Planning Commissioners.

Mr. Michael Moore, City Architect explained that in the past issues involving public views have arisen. One of the purposes of the study was to provide a range of options and to start to set policies regarding public views. He stated that the Study would be shared with City Council to possibly enact some of the suggestions within the Study.

Mr. Russo stated that the views in the City of Cincinnati are remarkable assets. He used a PowerPoint presentation to give an overview of the Public View Sheds Study.

Mr. Schneider stated that he felt the photography was very impressive. Mr. Faux concurred.

Mr. Schneider asked if other cities were incorporating view protection into their Zoning Codes. Mr. Russo answered that he found that there are a number of communities looking at both view and natural resource issues. He stated that if they can frame the Zoning Code around the protection of natural resources, view protection could be tied in. The gain for the city would be a greater strength in the efficacy for the Zoning Code.

Mr. Moore stated that one of the benefits is that every view in the study can be used in the CAGIS system.

Mr. vom Hofe congratulated Mr. Russo on the study and suggested that it would be beneficial to create pamphlets or other materials for education in schools. He further suggested that the City create a land-trading situation to increase park property within the City. Mr. Moore agreed.

Ms. McCray thanked Mr. Russo and Mr. Moore and said that she felt that the Study was incredible and a long-overdue resource for the City. She stated that it is not only just an urban design and planning resource but a way to highlight what's best about the City.

Mr. Schneider asked if there would be a way to use the Study within the decision making process. Mr. Faux stated that if the Planning Commission and City Council provide recognized official status to the Study then possibly yes it could be used to help decision making. He stated that he felt that the Study was a wonderful resource and is the foundation work that's required to demonstrate the public purpose that we are pursuing. He said that the Zoning Code does not provide legal protection of views. He stated that it was important that the Planning Commission and City Council move to the next step. He further said that we have incredible assets that should be protected and maximized to the advantage of the City.

Mr. Faux asked Ms. Carney if the Planning Commission could provide some official status to the Study. Ms. Carney suggested that the Commissioners approve the Study which would indicate their favorable opinion. Mr. vom Hofe agreed that by doing so a strong message would be sent indicating the Planning Commissions support of the work.

Mr. Stiles stated that he felt the Study was a tremendous work and felt that the City Council members and City Administration would be proud of it. He asked if Mr. Russo's thinking was to prioritize the best views and provide the most protection for them. Ms. McCray stated that she felt that even some of the low scoring views were interesting and warranted protection. She said that it was the sum of all of the views that made the City fantastic.

Mr. Schneider and Mr. Tarbell suggested that the Study be made available to a wider audience.

Motion: Mr. Schneider moved to approve the Public View Sheds Study.
Second: Mr. vom Hofe

Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe
and Mr. Schneider
Nays: None, **motion carried**

ADJOURN

Motion: Ms. McCray moved to adjourn.
Second: Mr. Schneider
Ayes: Mr. Faux, Ms. McCray, Mr. Tarbell, Mr. Stiles, Mr. vom Hofe
and Mr. Schneider
Nays: None, **motion carried**

Margaret A. Wuerstle, AICP
Chief Planner

Caleb Faux, Chair

Date: _____

Date: _____